

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT  
LARKANA**

*Constitutional Petition No. S-664 of 2018*

***Badaruddin Sanghi***

***Versus***

***Liaquat Ali***

**Mr. Shakeel Ahmed Abro, advocate for petitioner.  
Mr. Syed Zamir Ali Shah, advocate for respondents.  
Mr. Abdul Rasheed Soomro, state counsel.**

**Date of hearing: 21.12.2018**

**Date of decision: 21.12.2018**

**ORDER**

**KHADIM HUSSAIN TUNIO, J.**- Through present

constitutional petition, the petitioner has prayed as follows:-

*“(a): That this Honourable Court may kindly be pleased to set aside the impugned order Dated:21.06.2018 and Decree Dated:25.06.2018 passed by 4<sup>th</sup> Additional District Judge Larkana and further be pleased to upheld the order Dated:23.11.2017 passed by learned second senior civil judge Larkana.*

*(b): Further be pleased to direct the learned trial court to decide the case on merits.*

*(c): Any other equitable relief which this Honourable deems and fit may also be granted to the petitioner.*

*(d): Award costs of the petition to the petitioner.”*

2. Briefly, facts of the present case are that the petitioners/respondents filed Suit No.266 of 2016 for declaration and cancellation of documents and entries, possession and permanent injunction against the respondents in the Court of the 2<sup>nd</sup> Senior Civil Judge, Larkana. The case of the petitioner-

plaintiff's is that the petitioner's grandfather owned and had possession of the suit lands, after his death, the property was devolved upon his two sons, but the respondent No.1 got himself inserted in there by committing fraud. It is alleged that Muhkmuddin, the father of the petitioner had left behind his legal heirs, who are supposed to be rightfully handed over his property, and not the respondent No.1 who has managed fraudulent entries in his name and aims to deprive the petitioners from their rights.

3. The respondents No. 1 to 8 filed their joint written statements wherein they denied all the averments made in the plaint and further stated that the suit property never belonged to Mohammad Moosa, in fact, he had no property and the contents of the plaint are false and that the suit property belongs to the respondent No.1 who purchased it from his father in the year 1970 vide registered sale deed dated 25.04.1970, with the sub-registrar Larkana.

4. After hearing the parties' counsel, the trial Court vide order dated 23.11.2017, dismissed the subject suit under Order VII, Rule 11, CPC. The respondent No.1 filed revision against the petitioner-plaintiff, which was allowed vide order dated 21.06.2018.

5. Learned counsel for the petitioners has argued that the impugned order dated 21.06.2018 is illegal, misconceived, a result of improper application of law and facts, and based upon misreading and non-reading of the plaint and evidence available on record; that the impugned order does not require to be

maintained as is not maintainable by law; that it is a well-settled principle that while deciding an application under Order VII, Rule 11, CPC only averments in the plaint are deemed true and correct; that the revisional court has miserably failed to consider that respondent No.1 has deprived the applicant and usurped his share from the immovable property; that there are many legal and factual controversies involved in the matter which require full-fledged inquiry through evidence once issues are framed; that the learned Revisional Court has failed to consider that the respondent No.1 is a dishonest person who, during his service tenure as a clerk, committed many illegal acts within the Session Courts' record and there have also been cases registered against him whereby he was tried by the Anti-Corruption Court against him being a habitual of committing fraudulent acts of like manner; that the learned Revisional Court has failed to appreciate that the Assistant Commissioner, in his comments, has clearly mentioned that the respondent No.1 failed to produce any record in his favour and has manipulated and tampered with the revenue record; that the respondent No.1 has falsely stated that Mst. Shah Khatoon is his mother and has long expired, while she is still alive.

6. Conversely, the learned counsel for the respondents has mainly contended that the petitioner-plaintiff through the instant suit have sought for relief of declaration, possession and permanent injunction; that the plaint has not disclosed the clause of action; that the suit is not barred by the provisions of section 42 of Specific Relief Act.

7. I have heard the learned counsels for both the parties and perused the material available on record.

8. In order to appreciate the contentions of the learned parties' counsel, it would be advantageous to re-produce the relevant paragraphs of the aforesaid order of the revisional court, which reads as under:-

*"7. In the present case, the respondent No.1 has challenged the entries of record of rights, therefore, civil court has no jurisdiction to entertain the suit until and unless respondent No.1 first approach to the proper forum, which the trial Court has not considered. It is clearly mentioned in Order VII Rule 11 CPC that plaint can be rejected if it is barred by law however learned trial Court has not looked into the matter properly and appropriately and passed the order by observing that question of limitations is always mixed question of law and has not touched the point that Civil Court has no jurisdiction in respect of change of entries in record of rights.*

*8. Admittedly question of limitation is not involved in this case as contended by learned counsel for applicant and learned counsel for applicant could not properly argued before trial court on law point however court has to be conscious and look back four corners while passing order where law point is involved."*

9. From the above it is crystal clear that there is dispute between the parties over the possession of the subject property and the divergent pleadings of the parties have given rise to various issues to be framed in this case.

10. Manifestly, the learned revisional court rejected the plaint while holding that the petitioner-plaintiff has demanded the 1961, 1970 and some entries pertaining to the years 1930

and 1931 as such different cause of action cannot be pleaded in one suit and on the other hand, the petitioner-plaintiff's suit is barred by law and as such the petitioner-plaintiff has no cause of action to sue the defendants. Such observations of the revisional court are mere assumptions as to when the cause of action had been accrued to the plaintiff. Such observations revolved around factual controversies and the same could not be resolved without framing of issues from the pleadings of either parties. Therefore, observations of the revisional court were erroneous, depriving the plaintiff's legal right to avail remedy against the wrongs. In case of ***Saleem Malik v. Pakistan Cricket Board (PLD 2008 SC 650)***, the honourable Supreme Court of Pakistan has held as under:-

*“the plaint in the suit cannot be rejected on the basis of defence plea or material supplied by the opposite party with the written statement. This is settled law that in case of controversial questions of fact or law; the provision of Order VII, Rule 11, C.P.C. cannot be invoked rather the proper course for the Court in such cases is to frame issue on such question and decide the same on merits in the light of evidence in accordance with law. The rejection of plaint on technical grounds would amount to deprive a person from his legitimate right to availing the legal remedy for undoing the wrong done in respect of his legitimate right.”*

15. In view of what has been discussed above, I am of the considered view that order dated 23.11.2017, passed by the trial Court dismissing the application under Order VII Rule 11 C.P.C, which was free of any infirmities, has wrongfully been set aside by the revisional court vide impugned judgment dated 21.06.2018; therefore, this Constitutional Petition was allowed,

the order of the trial court was restored while the judgment passed by the revisional court was set aside vide short order dated 21.12.2018 and the matter was remanded back to the trial court with directions to frame issues, record evidence and decide the matter fully in accordance with law.

These are the reasons for the same.

**JUDGE**